IN THE

Supreme Court of the United States

OCTOBER TERM, 1948.

No. 241

SAMUEL O. BLANC,

Petitioner,

VS.

SPARTAN TOOL COMPANY,

Respondent.

Petition for Rehearing.

GORDON F. HOOK,
38 South Dearborn Street,
Chicago, Illinois
Counsel for Petitioner

The Scheffer Printing Company, DElaware 7-7171

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948.

No. 241

SAMUEL O. BLANC,

Petitioner,

vs.

SPARTAN TOOL COMPANY,

Respondent.

PETITION FOR REHEARING.

On October 25, 1948 this Court denied the petition for writ of certiorari filed by the petitioner herein on August 23, 1948 to review the judgment of the Seventh Circuit Court of Appeals affirming the judgment of the District Court in holding certain claims of petitioner's patents Nos. Re. 22,113 and 2,069,871 invalid and not infringed in direct conflict with decisions of the Circuit Court of Appeals for the Sixth Circuit in the cases of *Blanc* v. *Curtis,* 119 F. 2d 395 and *Blanc* v. *Cayo,* 139 F. 2d 695.

In view of the denial of this petition, it is evident that the petition apparently failed in clearly and precisely presenting the true situation, namely, an actual, real and embarrassing conflict of opinion and authority with respect to validity and infringement of the Blanc patents between the Circuit Court of Appeals for the Sixth Circuit in the above mentioned cases and the Circuit Court of Appeals for the Seventh Circuit in this case (168 F. 2d 296).

The refusal of this Court to resolve these conflicting decisions of the Sixth and Seventh Circuit Courts of Appeal will result in great and unwarranted injustice to the petitioner and will cause the general public undue hardship and uncertainty. Final adjudication of the Blanc patents with respect to validity and infringement by this Court is necessary to do justice in this case.

For example, in the case of *Toledo Pressed Steel Co.* v. *Standard Parts, Inc.*, 307 U. S. 350, 352, in which the writ was granted to review conflicting decisions in the Second and Sixth Circuits, this Court stated:

> "In the interest of plaintiff seeking to uphold the patent *prima facie* valid, and of the public, liable to exclusion from manufacture, use, or sale in virtue of the right it purports to confer, final adjudication as to validity is of primary importance."

The questions presented and the reasons why this Court should grant petitioner's writ have been set forth in the original petition at pages 4 to 8, inclusive, and the Court will not be burdened with a repetition of the points which have been urged as being sufficient to warrant this Court in reviewing the lower court's decision. It will be clear by reference to the opinions in the cases of *Blanc* v. *Curtis*, 119 F. 2d 395, and *Blanc* v. *Cayo*, 139 F. 2d 695, that the question of validity of the Blanc patents before the Circuit Court of Appeals for the Sixth Circuit was not "moot", or that the opinion expressed by that Court with respect to validity was not "dictum", as so erroneously urged by the respondent in its brief in opposition to the petition for writ of certiorari, pages 11 and 12 thereof. Contrary to respondent's contention, there is a genuine, real and embarrassing conflict involving the Blanc patents which should be resolved by this Court in the interests of

justice and the uniformity of decisions in the Sixth and Seventh Circuits.

This Court has consistently recognized such conflicts as grounds for the grant of petitions for writs of certiorari.

As was stated by this Court in the case of *Layne & Bowler Corporation* v. *Western Well Works, Inc., et al.*, 261 U. S. 387, 393:

> " • • • it is very important that we be consistent in not granting the writ of certiorari *except* in cases involving principles the settlement of which is of importance to the public, as distinguished from that of the parties, and in cases *where there is a real and embarrassing conflict of opinion and authority between the Circuit Courts of Appeal.*" (Italics ours).

In the case of *Magnum Import Co.* v. *Coty*, 262 U. S. 159, 163, this Court reiterated the rule as expressed above in the *Layne & Bowler* case as follows:

> "The question how the court should exercise this power next arises. The jurisdiction to bring up cases by certiorari from the Circuit Courts of Appeals was given for two purposes, *first to secure uniformity of decision between those courts in the nine circuits,* and second, to bring up cases involving questions of importance which it is in the public interest to have decided by this court of last resort." (Italics ours).

In the case of *Keller* v. *Adams-Campbell Co.*, 264 U. S. 314, 319, this Court again stated:

> "Such an ordinary patent case, with the usual issues of invention, breadth of claims, and non-infringement, this court will not bring here by certiorari *unless it be necessary to reconcile decisions of circuit courts of appeal on the same patent.*" (Italic ours).

In the later case of *Standard Brands, Inc.* v. *National Grain Yeast Corp.*, 308 U. S. 34, 35, this Court, in granting the petition to review conflicting decisions of the Third

and Fourth Circuit Courts of Appeals with respect to a patent stated:

> "Irreconcilable views have been approved and we must now decide which is to be preferred."

The consistency with which this Court has applied the rule for granting petitions for writ of certiorari where there is a real and embarrassing conflict of opinion with respect to the validity and infringement of a patent between Circuit Courts of Appeal is evidenced by a long line of cases, among which are *General Electric Co.* v. *Jewel Incandescent Lamp Co., et al.*, 326 U. S. 242, 243; *Universal Oil Products Co.* v. *Globe Oil & Refining Co.*, 322 U. S. 471, 473; *Dow Chemical Co.* v. *Halliburton Oil Well Cementing Co.*, 320 U. S. 320, 322; *Detrola Radio & Television Corp.* v. *Hazeltine Corporation*, 313 U. S. 259, 261; *Standard Brands, Inc.* v. *National Grain Yeast Corp.*, 308 U. S. 34, 35; *Toledo Pressed Steel Co.* v. *Standard Parts, Inc.*, 307 U. S. 350, 352; *General Electric Co.* v. *Wabash Appliance Corp., et al.*, 304 U. S. 364, 366; *Textile Machine Works* v. *Louis Hirsch Textile Machines, Inc.*, 302 U. S. 490, 491; *Mantle Lamp Co.* v. *Aluminum Products Co.*, 301 U. S. 544, 545; *Essex Razor Blade Corp.* v. *Gillette Safety Razor Co.*, 299 U. S. 94, 95; *Keystone Driller Co.* v. *Northwest Engineering Corp.*, 294 U. S. 42, 44; *Smith* v. *Snow, et al.*, 294 U. S. 1, 3; *Electric Cable Joint Co.* v. *Brooklyn Edison Co., Inc.*, 292 U. S. 69, 70; *Permutit Co.* v. *Graver Corporation*, 284 U. S. 53, 54; *Smith, Administratrix*, v. *Springdale Amusement Park, Limited, et al.*, 283 U. S. 121, 122; *Ensten et al.* v. *Simon, Ascher & Company, Incorporated*, 282 U. S. 445, 449; and *Sanitary Refrigerator Company* v. *Winters, et al.*, 280 U. S. 30, 34.

The circumstances under which the petition in these cases was granted are the same as exist in this case. There are no circumstances which would exclude the present case

from the application of the rule so well established by this Court.

It is respectfully requested that the Court grant a rehearing of the petition for writ of certiorari filed herein and set aside its order denying such petition and grant the prayer of the petition for writ of certiorari.

Respectfully submitted,

GORDON F. HOOK,
Counsel for Petitioner.

Certificate of Counsel.

The undersigned, attorney of record for the petitioner, Samuel O. Blanc, hereby certifies that the foregoing petition for rehearing is presented in good faith and not for delay, and is restricted to a presentation of a real and embarrassing conflict of opinion and authority between the Sixth and Seventh Circuit Courts of Appeal with respect to validity and infringement of the Blanc patents involved, a situation apparently overlooked by this Court in its review of the petition for writ of certiorari, which apparent oversight is an intervening circumstance of controlling significance in this case.

.....

Gordon F. Hook